THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0178, David West v. Salomon, Randlett & Bernard & a., the court on April 26, 2006, issued the following order:

The plaintiff, David West, appeals the trial court's order granting summary judgment to the defendants, Craig N. Salomon and H. Nina Bernard, upon his legal malpractice claims. The trial court ruled that, because the lawsuit for which the plaintiff had hired one of the defendants' partners, was already time-barred when he engaged this partner's services, he could not bring a negligence claim against the defendants or their partner for failing to bring the suit earlier. We affirm.

In reviewing the trial court's grant of summary judgment, we consider affidavits and other evidence as well as all inferences properly drawn from them in the light most favorable to the non-moving party. Stateline Steel Erectors v. Shields, 150 N.H. 332, 334 (2003). If our review of that evidence discloses no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law, we will affirm. Id. We review the trial court's application of the law to the facts de novo. Id.

The plaintiff argues that the trial court misapplied the discovery rule. "Under the discovery rule exception to the statute of limitations, when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the limitations period only begins to run when the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of." Perez v. Pike Indus., 153 N.H. ___, ___, 889 A.2d 27, 30 (2005) (quotation omitted).

The plaintiff asserts that the statute of limitations for his lawsuit against the people who sold a house to him and their real estate agent did not begin to run until April 1997, when a painting contractor first told him that material facts had been omitted from their sellers' disclosure. The trial court found that the plaintiff knew or in the exercise of reasonable diligence should have discovered the omissions in the sellers' disclosure in October 1996, when he first noticed peeling paint and spoke to the paint contractor. As the record supports the trial court's finding, we uphold it. The plaintiff's failure to question the paint contractor more thoroughly in October 1996 does not warrant application of the discovery rule. See id.

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk